

STATE OF MICHIGAN  
COURT OF APPEALS

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JAMES SANFORD,

Plaintiff-Appellant,

v

COMPREHENSIVE HEALTH SERVICES, INC.,  
d/b/a THE WELLNESS PLAN,

Defendant-Appellee.

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UNPUBLISHED

September 17, 2002

No. 230108

Wayne Circuit Court

LC No. 99-924899-CL

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

PER CURIAM.

In this constructive discharge action, plaintiff James Sanford appeals as of right from an order granting summary disposition pursuant to MCR 2.116(C)(8) to defendant Comprehensive Health Services doing business as the Wellness Plan (the Plan), his former employer. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts

According to the amended complaint, while serving as the Plan's director of member services, Sanford brought some regulatory and staffing concerns to the attention of senior management. The Plan subsequently placed Sanford on administrative leave pending an investigation, and told him not to enter the building without permission from the human resources department. Sanford resigned while still on leave. Paragraph 17 of the complaint alleged that the Plan "deliberately made plaintiff's working conditions so intolerable that plaintiff was forced to resign his position," and ¶ 18 set forth several reasons Sanford claims he was led to expect that he would be terminated following his administrative leave. The trial court granted summary disposition to the Plan under MCR 2.116(C)(8), ruling that the allegations in ¶ 17 of the amended complaint were conclusory and those in ¶ 18 were based on conjecture.

II. Standard Of Review

This Court reviews de novo a trial court's order granting defendant's motion for summary disposition.<sup>1</sup>

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<sup>1</sup> See *Stott v Wayne County*, 224 Mich App 422, 426; 569 NW2d 633 (1997), aff'd on other grounds 459 Mich 992 (1999).

### III. Legal Standard

The court rules permit a trial court to grant a motion for summary disposition if the party opposing summary disposition “has failed to state a claim on which relief can be granted.”<sup>2</sup> In other words, the trial court “determines whether the plaintiff’s pleadings allege a prima facie case.”<sup>3</sup> The pertinent inquiry is whether any “factual development could justify [Sanford’s] claim for relief.”<sup>4</sup> Pursuant to MCR 2.116(G)(5), the trial court may only consider the pleadings, “accepting all well pleaded facts as true.”<sup>5</sup> However, in its analysis, the trial court may make reasonable inferences from the allegations in the pleadings.<sup>6</sup>

### IV. Constructive Discharge And The Complaint

On appeal, Sanford first contends that, in ruling that the complaint was based on conjecture, the trial court ignored its mandate to accept all allegations and reasonable inferences as true. We disagree. The trial court concluded that ¶ 17 “indicates that [the Plan] deliberately made [Sanford’s] working conditions so intolerable that [Sanford] was forced to resign his position. That’s all it states.” That assessment is correct. Even taking the allegation as true, it was too conclusory to state a claim. “[M]ere conclusions, unsupported by allegations of fact, will not suffice to state a cause of action.”<sup>7</sup> The trial court then reviewed the factual allegations in ¶ 18, ruling that these allegations were inadequate to state a cause of action. Again, the record does not suggest that the trial court ignored its obligation to take the allegations as true. Rather, the allegations in ¶ 18 indicate that Sanford had reason to fear that he would be discharged, but said nothing about his working conditions.

Sanford also argues that the trial court erred in dismissing his action because further development of the allegations would lead to a rightful recovery for his constructive discharge. Again, we disagree.

A constructive discharge occurs when an employer deliberately makes an employee’s working conditions so intolerable that the employee is forced into an involuntary resignation or, stated differently, when working conditions become so difficult or unpleasant that a reasonable person in the employee’s shoes would feel compelled to resign.<sup>[8]</sup>

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<sup>2</sup> MCR 2.116(C)(8).

<sup>3</sup> *Garvelink v Detroit News*, 206 Mich App 604, 608; 522 NW2d 883 (1994).

<sup>4</sup> *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

<sup>5</sup> *New Hampshire Ins Group v Labombard*, 155 Mich App 369, 372; 399 NW2d 527 (1986).

<sup>6</sup> See *Harrison v Dep’t of Corrections*, 194 Mich App 446, 449-450; 487 NW2d 799 (1992).

<sup>7</sup> *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995).

<sup>8</sup> *Mourad v Auto Club Ins Ass’n*, 186 Mich App 715, 721; 465 NW2d 395 (1991); see also *Champion v Nation Wide Security, Inc*, 450 Mich 702, 710; 545 NW2d 596 (1996).

Clearly, this definition of constructive discharge focuses on the employer's conduct as much or more than it focuses on the employee's reaction to the conduct. Sanford's complaint alleged that the Plan undertook an investigation regarding his job performance and placed him on administrative leave while the investigation was ongoing. However, in his complaint, he failed to make a connection between these employment decisions and how his working conditions were so intolerable he felt forced to resign. Though Sanford relies on *Scott v Goodyear Tire & Rubber Co*<sup>9</sup> for the proposition that choosing to resign when there is no option of continued employment constitutes a constructive discharge, that case is factually and procedurally distinguishable from this case. The trial court did not err in concluding that Sanford failed to state a claim.

Finally, although raised for the first time on appeal, the Plan is correct that there is another, dispositive, problem with Sanford's complaint. Constructive discharge is not a cause of action, but rather is a legal rebuttal to an employer's defense that there is no cause of action because the plaintiff left the job voluntarily.<sup>10</sup> "Thus, an underlying cause of action is needed where it is asserted that a plaintiff did not voluntarily resign but was instead constructively discharged."<sup>11</sup> Sanford did not plead any such underlying action.

The complaint suggests that one of Sanford's theories was that he was discharged in retaliation for his observations and complaints regarding the Plan's alleged wrongdoings. Even assuming that Sanford was an at will employee alleging retaliatory discharge, he would have to allege that the Plan discharged him for refusing to violate a law or perform an illegal act, or reporting or threatening to report an illegal act.<sup>12</sup> His complaint, however, alleged only that he warned senior management that certain practices could result in sanctions or loss of licensure. The complaint did not allege that he refused to act illegally, threatened or actually reported any illegal activities, or took any action with regard to the Plan's practices. Thus, the trial court did not err in granting the Plan summary disposition under MCR 2.116(C)(8).

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly

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<sup>9</sup> *Scott v Goodyear Tire & Rubber Co*, 160 F3d 1121 (CA 6, 1998).

<sup>10</sup> *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 487; 516 NW2d 102 (1994).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 484-486.